



**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

**TE/GE: EO Examination
1100 Commerce Street
Dallas, Texas 75242**

501.03-00

Date: May 12, 2011

Release number: **201131024**

Release Date: 8/5/2011

LEGEND

Org-Organization name

XX-Date Address-address

Employer Identification Number:

Person to Contact/ID Number:

Contact Numbers:

Voice:

Fax:

**ORG
ADDRESS**

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear

This is a Final Adverse Determination Letter as to your exempt status under section 501(c)(3) of the Internal Revenue Code. Your exemption from Federal income tax under section 501(c)(3) of the code is hereby revoked effective July 1, 20XX. You agreed to the revocation of your exempt status by signing Form 6018, Consent to Proposed Action – Section 7428, on February 28, 20XX.

Our adverse determination was made for the following reasons:

None of the activities described in your Articles of Incorporation, Bylaws, and Form 1023 have been conducted to date. The activities that you have conducted serve the private interests of your founder.

Therefore, you do not meet the requirements of IRC section 501(c)(3) and Treas. Reg. section 1.501 (c)(3) -1(d) in that you failed to establish that you are operated exclusively for an exempt purpose.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code. You are required to file Federal income tax returns on Form 1120. Those returns should be filed with the appropriate Service Center.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit of declaratory judgment in the United States Tax Court, the United States Claims Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. You may write to the Tax Court at the following address:

You also have the right to contact the office of the Taxpayer Advocate. You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations or extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate, can, however, see that a tax matter, that may not have been resolved through normal channels, gets prompt and proper handling.

If you have any questions in regards to this matter please contact the person whose name and telephone number are shown in the heading of this letter.

Thank you for your cooperation.

Sincerely yours,

Nanette M. Downing
Director, EO Examinations



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE
TE/GE EO Examinations
400 N. 8th Street, Room 480 Box 74
Richmond, Virginia 23219

Date: February 2, 2011

ORG
ADDRESS

Taxpayer Identification Number:
Form:
Tax Year(s) Ended:
Person to Contact/ID Number:
Contact Numbers:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, please sign and return the enclosed Form 6018, Consent to Proposed Action – Section 7428. If you have already given us a signed Form 6018, you need not repeat this process. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, The Examination Process, and Publication 892, Exempt Organizations Appeal Procedures for Unagreed Issues, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7478(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate

cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing,
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Revised Report of Examination

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG (EIN)		Year/Period Ended 06/30/20XX

LEGEND

ORG - Organization name XX - Date Address - address City - city
State - state Country - country Secretary - secretary RA-1 & RA-2
= 1st & 2nd RA CO-1 through CO-5 = 1st through 5th COMPANIES DIR-1
through DIR-7 = 1st through 7th DIR

ISSUE:

1. Whether ORG, herein referred to as ORG, is exempt from federal income tax under IRC 501(c)(3)?

FACTS:

ORG, herein referred to as ORG, is recognized as an IRC 501(c)(3) as a public charity under Section 501(a)(1) & 170(b)(1)(A)(vi). ORG received its exemption from the Internal Revenue Service on March 21, 20XX and was incorporated in the Country (File #) for the following purposes as identified in its Articles of Incorporation:

1. To solicit and receive funds and other resources from the public and private sectors, to provide the wide range of and other devices referred to hereafter to perform the following listed charitable purposes;
2. To promote the use of aids and appliances by and impaired persons to improve the quality of their personal and professional lives;
3. To advocate for improved information access for all persons; and
4. To promote, through public education activities, greater awareness and understanding and thus improved attitudes toward the acceptance and employment of persons.

These articles were signed by DIR-1, DIR-2, and DIR-3 as incorporators along with DIR-4, who signed as the notary in March 20XX.

Prior to its incorporation in the f Country, ORG had been incorporated in the state of State in May 20XX (Corp ID#). DIR-4 was listed as the initial director and registered agent at the address of Address, City, State. Incorporation with the state of State was terminated in 20XX due to non-payment of fees. Names and addresses of officers were listed as follows:

DIR-4, President/Director – Address, City, State
DIR-5, President/Director – Address, City, State
Secretary, Secretary – Address, City, State
DIR-6, Director – Address, City, State

ORG Bylaws further provide that its purpose is to:

- Enhance educational and vocationally oriented training for and impaired persons; and
- Perform all legal acts necessary to accomplish these charitable purposes.

The Bylaws also indicate that “the government of the corporation shall be vested in the board of directors...The board of directors shall also be responsible for the management and administration of the corporation’s funds and other properties.”

In an attachment to Form 1023, Explanation to Form 1023, in response to the narrative description of your activities, it is stated that ORG “awards a text scanner to organizations, groups or itinerant teachers whose focus is helping people with visual impairments. The Foundation’s goal is to assist the maximum number

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of people; therefore, presents these scanners to groups or organizations that serve a significant number of applicants.”

Review of the donations page of the organization’s website states that

DIR-4, who is also founder of ORG and husband of the late ORG, for whom the organization was named, resigned as officer in February 20XX.

Initial interview with board members provided the following:

1. DIR-4 continued to conduct financial transactions and make decisions without the knowledge and approval of the governing board upon his resignation;
2. The organization maintained no office space or property;
3. The organization’s only attempt to obtain funds was through a failed effort to raffle off State waterfront property in which board members had no knowledge of; and
4. The organization conducted no charitable activities in the year of examination.

Review of bank records for the examination year indicates that Director-4 continued to endorse checks dated after February 20XX. No deposits were made to the bank account during the examination period ending June 20XX. However total payments made by the organization for the fiscal year were \$. Significant and questionable payments issued were identified as follows:

Payments Issued To	Total Amount	% of Total Expenses
CO-1 Tax Collector		
CO-2		
CO-3		
CO-4		
CO-5*		
TOTAL PAYMENTS		

Total Expenses - 20XX06

*NOTE: Total checks cleared by bank totaled \$. Check #'s in the amount of \$ each were written but did not clear the bank.

It was determined that during the year examined ORG owned a waterfront lot at Address, City, State (Parcel #) with an average assessed value of \$ for the exam period. Per property research, it appears this property was originally in the name of DIR-7 & 8 and then placed in the name of DIR-5, former President of the ORG entity incorporated in State. In 20XX, this property was then placed in the name of the organization.

Payments issued to CO-3, daughter of DIR-4, were issued because “she was handling his affairs in State as he lived in State” per statement obtained from Director-4. CO-3 was not an employee, member of the board, or affiliated with the organization. Allegedly, these payments were for the repairs and maintenance of a mobile home unit property located at Address, City, State. This property is alleged to have been donated to the organization by RA-1 about six or seven years ago; however, title remains in the name of RA-1. This property was also alleged to have been raffled off in a failed effort to raise funds for the organization in the exam year. No records were provided for substantiation of the repairs or maintenance. In a letter dated 11/26/XX from CO-3, written on behalf of Director-4, she stated that her “father made a mistake right from the beginning when he told you it (referring to the mobile home unit obtained from RA-1) was acquired directly from RA-1. This home was originally bought for me by my father.” Apparently, management of the mobile park would not allow RA-2 to move in because it is a retirement community in

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which RA-2 is not eligible to live in due to her age. As a result, Director-4 "donated the home to the foundation. The home has been and currently still is up for sale with all proceeds to go to the foundation." It was additionally stated that the home was never transferred to ORG from RA-1 because RA-2 husband, who was of the eligible age and going to live with RA-2 in the mobile unit in State, passed away. The expense of transferring it to the organization was also a factor.

Payment to CO-4, ORG Treasurer/Secretary of \$, upon numerous requests, was stated to be for "payment for advertisement and assistance to ORG" and "for service with helping to send out letters and assistance to DIR-4."

It was stated by Director-4 that payments to CO-5 were for ORG office rent located at Address, City, State. It was determined that this address is located in a gated condo community in subdivision, which is where Director-4 resided. Per 5-year lease signed by Director-4 in May 20XX, monthly rent was \$ with an increase of \$ each year resulting in payments of \$ and \$ as identified with checks written on the ORG account.

ORG governing board did not approve nor was privy to any of the properties owned and donated, the attempts to raffle the properties, payments issued to CO-3 for alleged property maintenance or the rental payments of the personal residence of DIR-4. There were no meeting minutes or written documentation from the Board approving payments of rent, maintenance of property, or payments to officers, nor documents to substantiate any of the payments issued, except for payments to the CO-2 taxes.

More than half of the funds expended by the organization during fiscal year June 20XX were used for the payment of (1) rent of the personal residence of DIR-4; (2) non-substantiate expenses to CO-3, daughter of Director-4, for alleged maintenance of property originally purchased for personal use and (3) an unsubstantial advertising expense allegedly made on behalf of the organization and incurred by CO-4, ORG Treasurer/Secretary. Other payments included property maintenance and taxes on assets intended for personal use and fundraising activities to raffle donated property. The governing board had no knowledge concerning the payment of these expenditures, nor the amount of the organization's assets. The board did not approve any of the expenditures.

Furthermore, the organization has failed to make efforts to obtain support from the general public or other sources outside of attempting to raffle property nor has it conducted exempt activities as stated in its articles and/or bylaws other than to sponsor two individuals to attend a conference for the blind.

LAW:

IRC §501(c)(3) of the Code exempts from federal income tax organizations which are organized and operated exclusively for charitable, educational, and other exempt purposes, provided that no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Tax Reg. §1.501(c)(3)-1(a)(1) states that in order to be an exempt organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Tax Reg. §1.501(c)(3)-1(d)(i) states that an organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals.

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Tax Reg. §1.501(c)(3)-1(d)(2) defines the term "charitable," in part, to include: relief of the poor, distress or underprivileged, advancement of religion, education or science, erection or maintenance of public buildings.

Tax Reg. §1.501(c)(3) defines "education," as used in 501(c)(3), as the instruction or training of the individual for purpose of improving or developing his capabilities; or the instruction of the public on subjects useful to the individual and beneficial to the community.

Tax Reg. §1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Tax Reg. §1.501(c)(3)-1(c)(2) states that an organization is not exclusively operated for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Tax Reg. §1.501(a)-1(c) defines "private shareholder or individual" as referring to persons having a personal and private interest in the activities of the organization.

Tax Reg. §1.501(c)(3)-1(f)(2)(i) states in general that regardless of whether a particular transaction is subject to excise taxes under section 4958, the substantive requirements for tax exemption under section 501(c)(3) still apply to an applicable tax-exempt organization (as defined in section 4958(e) and §53.4958-2) described in section 501(c)(3) whose disqualified persons or organization managers are subject to excise taxes under section 4958. Accordingly, an organization will no longer meet the requirements for tax-exempt status under section 501(c)(3) if the organization fails to satisfy the requirements of paragraph (b), (c) or (d) of this section.

Tax Reg. §1.501(c)(3)-1(f)(2)(ii) provides in determining whether to continue to recognize the tax-exempt status of an applicable tax-exempt organization (as defined in section 4958(e) and §53.4958-2) described in section 501(c)(3) that engages in one or more excess benefit transactions (as defined in section 4958(c) and §53.4958-4) that violate the prohibition on inurement under section 501(c)(3), the Commissioner will consider all relevant facts and circumstances, including, but not limited to, the following:

- (A) The size and scope of the organization's regular and ongoing activities that further exempt purposes before and after the excess benefit transaction or transactions occurred;
- (B) The size and scope of the excess benefit transaction or transactions (collectively, if more than one) in relation to the size and scope of the organization's regular and ongoing activities that further exempt purposes;
- (C) Whether the organization has been involved in multiple excess benefit transactions with one or more persons;
- (D) Whether the organization has implemented safeguards that are reasonably calculated to prevent excess benefit transactions; and
- (E) Whether the excess benefit transaction has been corrected (within the meaning of section 4958(f)(6) and §53.4958-7), or the organization has made good faith efforts to seek correction from the disqualified person(s) who benefited from the excess benefit transaction.

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IRC 4958(e) and Tax Reg. §53.4958-2(a)(1) defines "applicable tax-exempt organization" as an organization described in either section 501(c)(3) or section 501(c)(4) of the Code or an organization which was so described at any time during the five-year period ending on the date of the excess benefit transaction.

Tax Reg. §53.4958-8(a) states that Section 4958 does not affect the substantive standards for tax exemption under section 501(c)(3) or (4), including the requirements that the organization be organized and operated exclusively for exempt purposes, and that no part of its net earnings inure to the benefit of any private shareholder or individual. Thus, regardless of whether a particular transaction is subject to excise taxes under section 4958, existing principles and rules may be implicated, such as the limitation on private benefit. For example, transactions that are not subject to section 4958 because of the initial contract exception described in §53.4958-4(a)(3) may, under certain circumstances, jeopardize the organization's tax-exempt status.

IRC 4958(c) defines "excess benefit transaction" as any transaction in which an economic benefit is provided by an "applicable tax-exempt organization" directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing such benefit.

IRC 4958(a)(1) imposes a tax on each excess benefit transaction a tax equal to 25 percent of the excess benefit (the first tier tax). This tax must be paid by any disqualified person with respect to such transaction. An additional tax is imposed of 10 percent of the excess benefit on each organizational manager who knowingly participates in such transaction, unless such participation is not willful and is due to reasonable cause per Tax Reg. 4958(a)(2).

IRC 4958(b) provides that where an initial tax is imposed, but the excess benefit involved is such transaction is not corrected within the taxable period, a tax equal to 200 percent of the excess benefit involved is imposed and must be paid by any disqualified person with respect to such transaction (the second tier tax).

IRC 4958(f)(1) defines "disqualified person as:

- (A) Any person who was, at any time during the five-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization;
- (B) A member of the family of a disqualified person; and
- (C) A 35-percent controlled entity

Tax Reg. 53-4958-3(a)(1) further defines a disqualified person, with respect to any transaction, as any person who was in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization at any during the five-year period ending on the date of the transaction.

Additionally, Tax Reg. 53-4958-3(b)(1) states that a person is a disqualified person with respect to any transaction with an applicable tax-exempt organization if the person is a member of the family of a person who is a qualified person with respect to any transaction with the same organization. A person's family includes the person's spouse.

Tax Reg. 53-4958-3(c) provides that voting members of the governing body, presidents, chief executive officers, or chief operating officers are persons who are in a position to exercise substantial influence over the affairs of the organization.

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IRC 4958(f)(2) defines "organizational manager" as officer, director, or trustee (or any individual having powers or responsibilities similar to officers, directors, or trustees) of any applicable tax exempt organization.

Tax Reg. 53-4958-1(d)(4)(i) provides that an organization manager knowingly participates in an excess benefit transaction where: (i) he has actual knowledge that the transaction would be an excess benefit transaction, (ii) is aware that the particular transaction may constitute an excess benefit transaction, and (iii) negligently fails to make a reasonable attempt to determine if the transaction is an excess benefit transaction, or is aware it is an excess benefit transaction.

Tax Reg. 53-4958-1(d)(5) provides that an organization manager's participation in an excess benefit transaction is willful if it is voluntary, conscious and intentional.

Tax Reg. 53-4958-4(a)(1) states that to determine whether an excess benefit transaction has occurred, all consideration and benefits exchanged between a disqualified person and the applicable tax-exempt organization and all entities if controls are taken into account.

Tax Reg. 53.4958-49(c)(1) provides, in part, that an economic benefit is not treated as consideration for the performance of services unless the organization providing the benefit clearly indicates its intent to treat the benefit as compensation when the benefit is paid. Intent is demonstrated by written substantiation that is contemporaneous with the transfer of the economic benefit. If an organization fails to provide this contemporaneous substantiation, any services provided by the disqualified person will not be treated as provided in consideration for the economic benefit for purposes of determining the reasonableness of the transaction.

Tax Reg. 53.4958-4(c)(3) provides, in part, that contemporaneous substantiation can be demonstrated by:

- (A) the organization reporting the benefit as compensation on an original or amended Form W-2, 1099 or 990, provided that the amended form is filed before an examination has been started on the organization or disqualified person; or
- (B) The disqualified person reporting the benefit as income on an original or amended Form 1040, provided that the amended Form 1040 is filed before an examination has been started on the organization or disqualified person; or
- (C) Other written contemporaneous evidence can be used to demonstrated that the authorized body or an officer authorized to approve compensation has approved a transfer as compensation in accordance with established procedures, including an approved written employment contract executed on or before the date of the transfer, or documentation satisfying the requirements of section 53-4958-6(a)(3) indicating that an authorized body approved the transfer as compensation for services on or before the date of transfer.

If the failure to report an economic benefit is due to reasonable cause (within the meaning of §301.6724-1), however, then the organization will be treated as having clearly indicated its intent to provide an economic benefit as compensation for services.

Tax Reg. 301.6724-1 of the regulations provides that the reasonable cause can be established by showing that there were significant mitigating factors with respect to a failure to report, or that a failure arose from events beyond the organization's control, and that the organization acted in a responsible manner both before and after the failure occurred.

Tax Reg. 53-4958-6(a) provides that payments under a compensation arrangement are presumed to be reasonable if all of the requirements in §53.4958-6(c) are satisfied as follows:

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1. The compensation arrangement is approved in advance by an authorized body of the organization or an entity it controls, composed entirely of individuals who do not have a conflict of interest as to the compensation arrangement or property transfer;
2. Prior to making its determination, the authorized body obtained and relied upon appropriate data as to comparability; and
3. The authorized body adequately documented the basis for its determination concurrently with making that determination.

In *Rameses School of San Antonio, TX v. C.I.R (T.C. Memo 2007-85 2007)* the court held that the school was subject to revocation of its exempt status on account of failure to satisfy the operational test, which failure in turn was based on private benefit and private inurement. In such case, it was determined that inurement was evidenced by the failure of the duty of the governing board to provide oversight, direction, supervision and control over the administration of the school as required by its charter thus allowing its founder to exercise authority over the school without oversight from the board of directors; lack of supporting documentation in evidence of expenditures to pay for personal services of the founder; purchasing property as an individual and not as a representative of the school using school funds; and lease payments made by the founder in which no board meeting minutes exist demonstrating notice, acceptance or ratification of the lease in addition to no lease agreements being provided by the school.

In *Airlie Foundation, Inc. v. U.S.*, 826 F.Supp. 537, 1993, the District Court held that the IRS properly revoked an organization that was not operated exclusively for an exempt purpose when it was operated to a substantial extent for the benefit of its founder, the organization was a part of a network of organizations controlled by the founder, and the founder made various transactions within that network that abused the organization's and inured to the founder's personal benefit.

The court upheld revocation in *Church By Mail, Inc. v. C.I.R.*, 765 F.2d 1387. It found that the purpose and objective to which the income an organization is devoted is the ultimate test in determining whether it is operated exclusively for an exempt purpose.

In *Samuel Friedland Foundation v. U.S.*, 144 F. Supp. 74, the court states, "the issue of 'organized,' as this Court now conceives the law, is primarily a question of fact not to be determined merely by an examination of the certificate of incorporation but by the actual objects motivating the organization and the subsequent conduct of the organization. To some degree, 'organized' cannot be divorced from 'operated,' for the true purposes of organization may well have to be drawn in final analysis from the manner in which the corporation has been operated."

The word "private" is the antonym of "public;" a private shareholder, as distinguished from the general public, the supposed beneficiary of the benevolent activities of an institution devoted exclusively for public betterment. (*Kemper Military School v. Crutchley*, 274 F. 125, A.F.T.R. 1459 1921-4 C.B. 266)

In *Founding Church of Scientology v. United States*, 188 Ct. Cl. 490, 412 F.2d 1197 (1969) cert. Den. 397 U.S. 1009 (1970), the court upheld that the organization was not entitled to exemption due to inurement. In such case, the founder of the church was not only paid, in addition to his salary, commissions and royalties but he and his family received unexplained payments in nature of loans and reimbursements. The church was not entitled to exemption from federal income taxation under statute, which includes among those organizations exempt from taxation a corporation organized and operated exclusively for religious or educational purposes, no part of net earnings of which inures to the benefit of any private shareholder or individual.

The court held that the Commissioner did not err in denying IRC 501(c)(3) exempt status of a church controlled by a family. Furthermore, nothing was shown in the statements of income or expenses, as budgeted or expended for the care of the needy, the sick or the imprisoned, traditionally the beneficiaries of the ministrations of churches or for any kind of mission or evangelistic programs. The decision to

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expend church funds were made by the controlling family members of the organization, who served as voting members and board members, which significantly benefited the family. Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531 (1980), affd. 670 F.2d 104 (9th Cir. 1981).

Additionally, organizations exempt under IRC 509(a)(1) & 170(b)(1)(A)(vi) are charities that normally receive a substantial part of their support from governmental and/or direct or indirect contributions from the general public.

TAXPAYER'S POSITION:

The organization believes it should be granted additional time to prove that it can operate in an orderly path. It has made efforts to conduct board meetings, revise its bylaws and bank account requirements to avoid misuse of funds, in the current year it has been involved in sponsoring overseas blind educators to attend a national conference held by the American Council of the Blind, and it has attempted to make the founder aware that he is not to be making decisions or transactions without approval from the board.

GOVERNMENTS POSITION:

DIR-4, ORG Founder, even upon his resignation continued to write checks on the ORG account, maintained properties, conducted fundraising raffle activities and allegedly paid for maintenance and repairs of a residence purchased for his daughter, all of which were unbeknown and unapproved by the ORG governing board. All the factors in this case highlighted as indicative of a prohibited relationship have included control by the founder over the entity's funds, assets and disbursements; use of the organization's funds for personal rent and other expenses for the founder and his family without any accompanying evidence or analysis of reasonableness of the amounts or insight, knowledge or approval of the ORG governing board as identified in its bylaws. Checks issued were signed by Director-4 which indicates that his acts were willful because they were voluntary, conscious and intentional. Although excess transactions may be taxed to the disqualified persons without jeopardizing the exempt status of the organization revocation is being proposed. Considering the facts described above, ORG did not receive or attempt to solicit donations or funds from the general public, it did not conduct any charitable activities, more than half of the organization's expenses for the fiscal year have been used to pay the personal expenses of the founder and his family, who provided no substantiation of payment's received. This indicates that the organization is not organized and operated "exclusively" for charitable purposes and further proves that the organization is being run primarily for the benefit of the founder, thus the organization operates to serve the private interests of a designated individual rather than a public interest and inures to the benefit of a private shareholder or individual. Additionally, the lack of exempt activity and means of support required by a public charity under IRC 509(a)(1) & 170(b)(1)(A)(vi) to present is evidence that ORG should not maintain its exempt status.

CONCLUSION:

Excess benefit transactions as provided under IRC 4958 were conducted by founder, DIR-4, to include significant unsubstantiated and unapproved payments of rent in which expenses of the organization primarily benefited him. Additional payments issued to Director-4s' daughter, CO-3, and ORG Treasurer/Secretary, CO-4, although not significant were also unsubstantiated, unapproved and unknown by the ORG board.

ORG operates to serve the private interests of a designated individual and inure to the benefit of a shareholder and, therefore, is not operated exclusively for religious, educational or charitable purposes. It has failed to conduct charitable or educational activities as set forth in its Articles and Bylaws and as required by IRC 501(c)(3) nor has attempted to solicit funding outside of attempts to raffle off property even beyond the examination year.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG (EIN)		Year/Period Ended 06/30/20XX

Although IRC 4958 imposes a tax on disqualified members for excess benefit transactions without potentially revoking the exempt status of an organization, it is our conclusion that ORG has not and does not conduct sufficient exempt activities as provided in its Articles, Bylaws and Form 1023 application to remain exempt as provided under Tax Reg. §1.501(c)(3)-1(a)(1). None of the described activities it has been organized to do have been conducted to present and thus exemption, as such should be revoked. We conclude that ORG does not qualify for exemption from federal income tax under section 501(c)(3) of the Code effective July 1, 20XX.